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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,339	04/13/2004	Abraham Bakal	170.1337	4511
21831 7590 04/04/2007 WOLF BLOCK SCHORR AND SOLIS-COHEN LLP 250 PARK AVENUE NEW YORK, NY 10177			EXAMINER WONG, LESLIE A	
			ART UNIT	PAPER NUMBER
			1761	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/04/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/823,339

Applicant(s)

BAKAL ET AL.

Examiner

Leslie Wong

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-74 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-74 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 36-38, 59, 61, 62 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fotos et al (US 6365217) and Fotos et al (US 6180157).

Fotos et al (US 6365217) teach an agglomerate comprising an intense sweetener and a carrier (see entire document, especially claims 1, 4, and 7).

Fotos et al (US 6180157) teach an agglomerate comprising an intense sweetener and a carrier (see entire document, especially claims 1, 4, and 7).

The claims appear to differ as to the recitation of a specific bulk density.

The bulk density would be no more than inherent and/or obvious to that of Fotos et al (US 6365217 and US 6180157) as the same components are used.

Claims 1-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fotos et al (US 6365217), Fotos et al (US 6180157), Vleugels (US 5902624), and Karwowski et al (US 4741910).

Fotos et al (US 6365217 and US 6180157) disclose an agglomerate comprising an intense sweetener and a carrier (see entire document, especially claims 1, 4, and 7). Fotos et al (US 6365217 and US 6180157) disclose dextrose and maltodextrin and the conventional process of agglomeration (see entire patents and the claims).

Vleugels (US 5902624) disclose a composition comprising aspartame and a carrier including maltodextrin and dextrose, wherein the free bulk density is  $350 \text{ kg/m}^3$  or lower (see entire patent, especially column 6, lines 61-63 and Table 1).

Karwowski et al (US 4741910) disclose an agglomerated aspartame comprising aspartame, maltodextrin, and corn syrup solids (see entire document, especially column 5, lines 16-39 and column 6, lines 13-15).

The claims differ as to the specific amounts claimed.

In the absence of a showing to the contrary, the selection and manipulation of the amounts of known components to obtain no more than expected results is well-within the skill of the art.

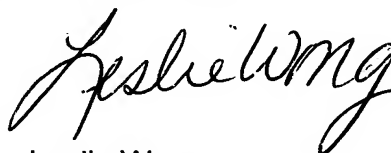
It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use the claimed amounts in either Fotos et al (US 6365217), Fotos et al (US 6180157), Vleugels (US 5902624), or Karwowski et al (US 4741910) because the use of intense sweeteners, carriers, and agglomeration in the sweetener art is conventional. Applicant is using known components to obtain no more than expected results

Cherukuri et al (US 4981698), Goodacre et al (US 5061320), and Yotka (US 5466471) are cited as of interest to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Leslie Wong  
Primary Examiner  
Art Unit 1761

LAW  
March 28, 2007